

Congress of the United States
House of Representatives
Washington, DC 20515-5401

November 30, 2009

Ms. Charlene Frizzera
Acting Administrator
Centers for Medicare and Medicaid Services
Hubert H. Humphrey Building, Room 445G
200 Independence Avenue, SW
Washington, DC 20201

Dear Acting Administrator Frizzera:

Over 4,000 Medicare beneficiaries in Puerto Rico require life-sustaining renal dialysis treatments on a weekly basis. These individuals are at risk of losing the care they need if the CMS finalizes a proposed rule to eliminate the wage index floor for renal dialysis services. I respectfully ask that you maintain this floor in order to ensure adequate Medicare payments for dialysis providers in Puerto Rico.

CMS has announced that, beginning on January 1, 2011, renal dialysis facilities will be reimbursed for services provided to Medicare patients pursuant to a new prospective payment system (ESRD-PPS). The Proposed Rule for the ESRD-PPS was published in the Federal Register on September 29, 2009.

In the Proposed Rule, CMS proposes to eliminate the overall wage index floor when ESRD-PPS is implemented in 2011. The elimination of the floor will pose a unique challenge to renal dialysis facilities in Puerto Rico because the Island is one of the only U.S. jurisdictions where wage indexes fall below CMS' CY 2009 floor of 0.70. Current wage indexes for Puerto Rico's dialysis facilities range from 0.32 to 0.44.

Even with the wage index floor in place, dialysis providers in Puerto Rico are already struggling, as I detailed in an April 2009 letter to the House Committee on Ways and Means, the House Committee on Energy and Commerce, and James Kerr, CMS Regional Administrator, Region II. Specifically, Puerto Rico has the lowest hospital wage index values—which are used for dialysis treatment reimbursement calculations—of any U.S. jurisdiction. CMS uses four-year-old hospital cost report data in order to calculate current index values. Thus, to calculate the calendar year 2009 value, CMS used data from 2005 cost reports. In Puerto Rico, this method of calculation has significant negative implications, since the method does not reflect the imposition of germane mandatory minimum wage laws. Dialysis facilities in Puerto Rico must hire registered nurses to provide patient care and, in 2005, Puerto Rico enacted a minimum wage law

for nurses employed in the private sector. The three-year implementation of that law began in 2006 and recently concluded. Over these last three years, the minimum hourly wage for registered nurses on the Island increased by about \$8.50. CMS's wage index calculation for 2009, however, reflects none of these increased costs because of the four-year lookback period. Because of this and other factors, it is my understanding that dialysis providers in Puerto Rico have seen an \$8 million reduction in Medicare reimbursements over the last two years.

If the wage index floor is eliminated, an already-bad situation is likely to become severe. Elimination of the floor will equate to a roughly \$12 million reduction in Medicare reimbursement (roughly \$30 per dialysis treatment) for dialysis services rendered in Puerto Rico. I am advised that, in the absence of the current floor, Medicare payments to all of the renal dialysis facilities in Puerto Rico will fall below operating costs. Dialysis providers in Puerto Rico may be forced to consolidate or cease operations, leaving vulnerable patients in jeopardy. Some patients in Puerto Rico with end-stage renal disease may be left without access to care. Others may be compelled to relocate to other U.S. jurisdictions to obtain essential services.

In light of the foregoing, I respectfully urge you to retract your proposal to eliminate the wage index floor applicable to reimbursement for renal dialysis services rendered in Puerto Rico when you finalize implementation of the ESRD-PPS.

Thank you for your attention to this important matter. Please do not hesitate to contact my office if you have any questions related to my request. John Laufer, my Legislative Director, is a good first point of contact (202-225-2615).

Sincerely,



Pedro R. Pierluisi
Member of Congress

cc: James T. Kerr, CMS, Regional Administrator, Region II
The Honorable Charles B. Rangel, Chairman, Committee on Ways and Means
The Honorable Dave Camp, Ranking Member, Committee on Ways and Means
The Honorable Fortney "Pete" Stark, Chairman, Committee on Ways and Means,
Subcommittee on Health
The Honorable Wally Herger, Ranking Member, Committee on Ways and Means,
Subcommittee on Health